

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENTS ON BEHALF OF STUDENT,

v.

SAN MARCOS UNIFIED SCHOOL
DISTRICT,

OAH CASE NO. 2013040715

SAN MARCOS UNIFIED SCHOOL
DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NO. 2013071140

ORDER GRANTING MOTION TO
CONSOLIDATE

On April 16, 2013, Parents on behalf of Student (Student), filed a request for due process hearing (complaint) in Office of Administrative Hearings (OAH) case number 2013040715 (Student's case), naming the San Marcos Unified School District (District). Student alleges that the District failed to assure that the goals, placement and services in its March 7, 2013 offer of an individualized education program (IEP) for Student constituted an appropriate education in the least restrictive environment. On May 16, 2013, OAH granted the parties' joint request for continuance of Student's case.

On July 25, 2013, the District filed a complaint in OAH case number 2013071140 (District's case), naming Student as the respondent. The District's complaint asks that OAH find that the District's IEP of May 24, 2013, as amended on June 13, 2013, constitutes a free appropriate public education in the least restrictive environment for Student.

The District filed a motion to consolidate its case with that of Student the same day it filed its complaint. The District asserts that consolidation is warranted because both cases involve the same parties, the same legal issues, arise from the same events, and will involve the same witnesses. Student has not filed an opposition to the District's motion to consolidate or otherwise responded to the motion.

DISCUSSION

Although no statute or regulation specifically provides a standard to be applied in deciding a motion to consolidate special education cases, OAH will generally consolidate matters that involve: a common question of law and/or fact; the same parties; and when consolidation of the matters furthers the interests of judicial economy by saving time or preventing inconsistent rulings. (See Gov. Code, § 11507.3, subd. (a) [administrative proceedings may be consolidated if they involve a common question of law or fact]; Code of Civ. Proc., § 1048, subd. (a) [same applies to civil cases].)

Here, although Student's complaint concerns an IEP offer made earlier than the IEP offers at issue in the District's complaint, both cases involve the same parties and the same legal issues. The District contends that many of the same witnesses will testify in both cases and that the evidence will also be substantially the same. Student has not contended to the contrary. Because of these factors, the interest of judicial economy will be best served by consolidation of the cases. The District's motion to consolidate is therefore GRANTED.

ORDER

1. The District's Motion to Consolidate is granted.
2. All dates previously set in OAH Case Number 2013040715 [Student's Case] are vacated. The dates for mediation, prehearing conference, and due process hearing in this consolidated matter shall be those set by the scheduling order issued by OAH on July 30, 2013, in the District's case, to wit:

MEDIATION: August 8, 2013, at 9:30 a.m.

TELEPHONIC PREHEARING CONFERENCE: August 12, 2013, at 1:00 p.m.

DUE PROCESS HEARING: AUGUST 20, 2013, at 9:30 a.m., and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

3. The 45-day timeline for issuance of the decision in the consolidated cases shall be based on the date of the filing of the complaint in OAH Case Number 2013040715 [Student's Case].

Dated: July 31, 2013

/s/

DARRELL LEPKOWSKY

Administrative Law Judge

Office of Administrative Hearings